

State of California
California Water Commission

**First Notice of Public Availability of Modified Text
and Availability of Additional Documents**

Water Storage Investment Program Quantification Regulations

Public Hearing Date: March 16, 2016
Public Availability Date: September 2, 2016
Deadline for Public Comment: October 3, 2016

At its August 29 public meeting, the California Water Commission directed Commission staff to move forward with the public process to notice modified text and additional documents for public comment.

The Commission directed the Executive Officer to make the modified regulatory language, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Commission further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and present the regulation to the Commission for further consideration.

All regulatory documents for this rulemaking are available online at the following website:

<https://cwc.ca.gov/Pages/QuantificationRulemaking.aspx>

The originally proposed regulatory language is shown in plain text. New deletions and additions to the proposed language that are made public with this notice are shown in ~~strikethrough~~ and underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 30-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in the Proposed Revisions to Regulations.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. New section 6000 text is added to provide readers with context of these regulations through a purpose statement that explains the context and boundaries of the regulations. All subsequent sections of the regulations were also renumbered.
2. The following changes were made to Section 6001 as renumbered, Definitions. Additionally, all definitions have been renumbered.
 - Definitions that were deleted because the term is no longer used in the regulations:
Anadromous
 - CALFED
 - California's CWA 303(d) list

- Certainty of improvement
- Commitment
- Complete application
- Constant dollar year
- Days
- Encumbered
- Feasible
- Floodplain
- Flow regimes
- Fry
- Improvement action
- Invasive species
- Pre-application
- Public utility
- Restore
- Return on investment
- Salmonid
- Sensitivity analysis
- Solicitation period

The following definitions were added:

- CDFW was added to define the acronym for the California Department of Fish and Wildlife;
- Current conditions was added to provide certainty to the applicant that current conditions match an applicant's CEQA document;
- Public benefit ratio was added to distinguish the ratio of monetized public benefits from the overall calculation of return on investment; and
- State Water Board was added to clarify that it means the State Water Resources Control Board.

The following definitions were edited to refer directly to the statutory or regulatory definitions in the Water Code or the California Code of Regulations to enhance clarity:

- Agricultural water supplier;
- CALFED surface storage projects;
- Delta;
- Disadvantaged communities;
- Emergency response;
- Flood control benefit;
- Groundwater dependent ecosystem;
- Groundwater sustainability agency;
- Groundwater sustainability plan;
- Mutual water company;
- Nonprofit organization;
- Public agency;
- Public benefit(s);
- Undesirable result(s); and
- Urban water supplier.

The following definitions were edited for clarity or to incorporate other defined terms:

- “Applicant” was edited to remove superfluous language;
- “Application” was edited to refer to the application process included in the regulations;
- “Beneficial uses of the Delta” was edited to reorder the possessive of the document, “Dewatering” was edited to clarify that juvenile salmonids are stranded during a dewatering condition;
- “Duration of improvement” was edited to include the length of time an improvement will provide the intended benefits;
- “Existing environmental mitigation or compliance obligations” was edited to specifically list the enforceable requirements that qualify as an existing environmental mitigation or compliance obligation;
- “Funding recipient” was edited to align the terms with terms now used throughout the regulations;
- “Geographic scope” was edited to clarify it must be used to calculate the physical changes caused by a project;
- “Groundwater contamination prevention project” was edited to explain what “contamination” means in the context of a groundwater contamination project;
- “Immediacy of improvement action” was edited for clarity;
- “Recreational purposes” was edited to clarify that health was a benefit that could be provided through a recreational purpose;
- “Staff” was edited to indicate that it would include individuals reviewing applications for technical purposes;
- “Tribe” was edited to better align with the enabling statutes; and
- “With-project future conditions” and “Without-project future conditions” were edited to specify and clarify the precise future condition years of 2030 and 2070 must be evaluated for each of these conditions.

3. Renumbered section 6002 text is modified to provide better continuity and clarity for readers. Text was added at the beginning of the section to indicate the section is limited to providing the requirements of an application, including requirements for quantifying the public benefits of a project. The general provisions contained in the deleted text have been moved to a separate section at the end of the regulations, or modified and are now found in other subsequent sections.
4. Section 6003 text is modified to better articulate what needs to be submitted as part of the application. Additionally, minor clarifying and grammatical changes have been made throughout the section. The revised text is necessary to better align with subsequent sections of the regulations. New text has been added to incorporate by reference tables needed from the applicant for the relative environmental value determination by California Department of Fish and Wildlife and the State Water Resources Control Board. Deleted text includes the removal of the pre-application process. The pre-application was intended to be used to identify projects that may not meet the eligibility requirements before those project proponents undertook the expense of completing a full application. In early 2016, applicants began submitting project concept papers to the Commission, and the Commission continues to accept concept papers. The concept papers summarize project information including potential applicants, project types, public and non-public benefits, and project operations. Commission staff has provided feedback on all of the Concept Papers to help potential applicants identify potential eligibility issues. Additionally, Comments received on the January 2016 draft regulations indicate the need to streamline the process and shorten the application timeline. Removing the pre-application phase shortens the time needed for the application process by approximately 3 months without loss of the utility of the pre-application process because the concept paper process fulfilled the intended purpose.. Deleting the pre-application period is responsive to comments that requested a faster and

more streamlined process overall.

Additional changes to this section include:

- a) Shortening the application period from six to five months, which was necessary to better streamline the process to ensure the funds are disbursed as quickly as possible.
- b) In renumbered section 6003(a)(1)(A), an executive summary is now required that describes the project. This executive summary is necessary to provide Commissioners information about projects that the Commissioners use in their deliberation process.
- c) In renumbered section 6003(a)(1)(F), the requirement for commitments for at least 75 percent of the non-public benefit cost share has been deleted because Water Code section 79757 provides the statutory deadline for completing this requirement.
- d) In renumbered section 6003(a)(1)(H), the description of anticipated project operations has been expanded to clarify what the application should contain to meet the requirement to provide a preliminary operations plan.
- e) In renumbered sections 6003(a)(1)(I) – (K), information otherwise required in different sections of the regulations is now all contained in these subsections.
- f) Renumbered section 6003(a)(1)(L) has been revised to make minor grammatical changes and to clarify what type of supporting documentation will be required to show a measurable improvement to the Delta if a project is not located in the Delta watershed. This change is necessary to ensure the regulations meet the statutory requirements that all projects show a measurable improvement to the Delta.
- g) Renumbered section 6003(a)(1)(M) has been added to clarify that other Commission policies must also be considered in the application, including improving the operations of the state water system, as required by Water Code section 79750(b).
- h) Renumbered section 6003(a)(1)(N) has been edited to delete the requirement to summarize how the project supports the long term provision of safe and affordable water supplies to systems in the State Water Board's Small Water System program. This requirement was intended to assess how the project might benefit disadvantaged communities. The water quality relative environmental value process addresses this aspect of a project and uses the Water Quality Application Tables incorporated by reference in the regulations in renumbered section 6003(a)(1)(R)..
- i) Renumbered section 6003(a)(1)(O) has been included to require applicants to provide a table explaining the physical and economic benefits, as required by the incorporated document. This change is necessary to provide staff with a consistent table to evaluate a project and compare projects based on the information from each project.
- j) Renumbered section 6003(a)(1)(P) incorporates by reference the Water Storage Investment Program Technical Reference Document (Technical Reference). The staff report and statement of reasons for the Technical Reference is also attached to this notice. Additionally, this subsection has been modified to indicate the feasibility studies are not required to be completed at the time of the application, consistent with the requirements of Water Code section 79757.
- k) Renumbered section 6003(a)(1)(Q) has been added to require a statement explaining how coordinating facilities might be affected by the project. This addition is necessary for the Commission to evaluate the impact on the state water system as a whole, as required by Water Code section 79750(b).
- l) Renumbered section 6003(a)(1)(R) has been revised to clarify the description required is only applicable to the public benefits, and to incorporate two new worksheets that must be completed by the applicants. Inclusion of the worksheet will provide staff with a document that is the same for each project to assist in reviewing the projects in a more streamlined manner.
- m) Renumbered sections 6003(a)(1) (U) and (V) are included to ensure the project complies with the State's policies related to tribal resources.
- n) Renumbered section 6003(a)(1)(X) was changed to remove extraneous language.
- o) Renumbered section 6003(a)(1)(Y) was added to the application requirements to ensure

the Commission has sufficient knowledge related to any early funding requests at the beginning of the evaluation of the application. Including this information in the application will streamline the application process since staff will not need to request the information.

- p) Renumbered section 6003(a)(1)(Z) was modified to require the applicant attestation of submitted information be made under penalty of perjury to ensure applicants understand the importance of submitting accurate and truthful information in their applications.
 - q) New section 6003(a)(1)(AA) was added to ensure that all public benefits of a project are considered by staff and the Commission to ensure the highest return on public investment for public benefits that can be funded through the Program.
 - r) New section 6003(a)(1)(BB) was added because the description of the with-project conditions is necessary for the quantification of benefits; this information is needed to evaluate the accuracy of the quantification of benefits.
 - s) New section 6003(a)(1)(CC) was added because staff needs to confirm the quantification methods used to quantify the public benefits, if the applicant does not use those contained in the Technical Reference, were sound and reasonable for the project.
 - t) New section 6003(a)(1)(DD) was added because the technical review requires the information requested, so it must be submitted with the application.
5. New section 6004 incorporates changes in the way climate change is considered in the quantification of benefits. The Commission received many comments on the 5. January 2016 draft regulations regarding how climate change was considered in the quantification of benefit. The January 2016 draft regulations required applicants to include the median level climate conditions for the period of 2036-2065 (surrounding 2050) in the with- and without-project conditions for the quantification of project benefits and conduct sensitivity analysis of project benefits with the "highly challenging" climate conditions for the period of 2036-2065. Comments received indicate the median level climate conditions did not represent the variability represented in the variety of accepted climate models. To be responsive to comments, approach presented in these revised regulations requires applicants to analyze the project benefits with two future climate conditions, 2030 and 2070. The climate conditions represented in these two conditions were generated from an ensemble of the 20 climate projections that are most appropriate for California water resources planning and analysis as recommended by the Department of Water Resources' external Climate Change Technical Advisory Group, comprised of 14 members representing the diverse areas of expertise in describing and assessing the changing climate of California. The 2030 condition represents the "near future" climate condition, and 2070 represents the "late future" climate condition. To assist applicants, model runs for without-project future conditions are being provided by Water Commission. Applicants will also be required to disclose how the project benefits might change with more extreme climate conditions using sensitivity analysis. Shifting from original climate change approach to the use of 2030 and 2070 conditions and supplied model run data being provided by Commission staff, caused modifications to most subsections in 6004 including:
- a. Original section 6004(a) introductory text is incorporated into the section 6004 (a) text in these modified regulations.
 - b. Section 6004(a)(1) specifies use of the 2030 and 2070 conditions provided in the technical reference document.
 - c. Section 6004(a)(3) was simplified. Text has modified to account for the 2030 and 2070 conditions data being provided.
 - d. Section 6004(a)(4) text reorganized for clarity and subsection (J) was modified to incorporate the use of 2030 an 2070 conditions.
 - e. Original section 6004(a)(5)(E) and (F) were move to the technical reference document.
 - f. Section 6004(a)(8) was written to incorporate climate change scenarios that more

challenging than the 2030 and 2070 conditions.

6. New section 6005 text is added to direct the applicant to each section in the regulations that determines whether an applicant is eligible and whether the application is complete.
7. Revised and renumbered section 6006 is modified to more clearly describe eligibility and completeness evaluations and tie more directly to application items required in section 6003. Text deleted from section 6006(c)(1)(A) is now found in section 6003 as modified, including deleted section 6006 (c)(1)(A)(7) which was simplified and appears as section 6003(a)(1)(K)
8. New section 6006(c)(2) is added to show additional eligibility requirements which are statutory requirements that may take more time to review. Evaluation of these additional eligibility criteria is part of the the technical review.
New section 6006(c)(3) is added to ensure the application contains specific information necessary to complete the technical review contained in section 6007.
9. Section 6007 (previously 6002(c)(5)) is edited to better explain the technical review and better tie the review to items required in section 6003. The added text provides better transparency of process and clarity for anyone reading the regulations. From comments received on the January 2016 draft regulations, the revised regulations contain modifications to decrease the application time period. The text describing a peer review process in the January 2016 draft regulations, old section 6002 (c)(6) is removed. Removal of the peer review process simplifies the application process and increases efficiency within the review since multiple agencies (Commission, Department of Water Resources, State Water Board, and Department of Fish and Wildlife) are involved in the review and management of each agency will be reviewing their respective staff's work. An additional review of management reviewed staff review is unnecessary.
 - a. Renumbered section 6007(a) is added to clearly explain the components of the expected return on public investment for a project. Listed components are explained in subsequent new sections.
 - b. Renumbered section 6007(b) is added to explain the public benefit ratio component, what application items will be used by staff to conduct an evaluation, and staff action during the evaluation.
 - c. Renumbered section 6007(c) consolidates and modifies the original regulations sections 6005 and 6006, Priorities and Relative Environmental Values, respectively. The priorities and relative environmental values previously contained in those sections have been reformatted into tables. Additionally, the section includes new language that explains how the California Department of Fish and Wildlife (CDFW) and the State Water Resources Control Board (State Water Board) will calculate the relative environmental values based on the priorities listed in the regulations.
 - d. Renumbered section 6007(d) is added to explain the Water System Improvement component. The metric used for this component and how staff will evaluate that metric is explained.
 - e. Renumbered section 6007(e) is added to explain the implementation risk component of the expected return for public investment on a project and how it will be evaluated.
 - f. Renumbered section 6007(f) is added to explain the resiliency and non-monetized public benefit component of the expected return on public investment of a project and how that component will be evaluated by staff.
8. New section 6008 text is added to fully explain scoring of applications once the evaluation is complete. The added text increases transparency of process and adds clarity for potential applicants.
 - a. The new section 6008 (a) describes when scores will be generated in relation to other sections of the regulations.
 - b. The new section 6008 (b) shows the maximum component point values that can be given to any project.

- c. The new section 6008 (c) describes how component metrics will be mathematically normalized to reach a usable component score if necessary. This procedure is used in subsequent subsections in the scoring section. Stating it in this subsection allows for subsections to refer to this process so text does not have to be repeated.
 - d. The new section 6008(d) describes how the public benefits ratio component score for a project is generated.
 - e. The new section 6008(e) describes how the relative environmental value component score is generated.
 - f. The new section 6008(f) describes how the water system improvement component score is generated.
 - g. The new section 6008(g) describes how the implementation risk component score is generated.
 - h. The new 6008(h) describes how the resiliency and non-monetized benefit component score is generated.
 - i. The new section 6008(i) describes how a project's expected return on public investment score is generated by summing the component scores.
9. New section 6009 is added to allow an appeal by the applicant if the applicant disagrees with modifications to the public benefit ratio from the technical review. The timelines and limits on the appeal balance the interests of the applicant to contest staff's assessment against the need to keep the Program on track and moving forward. This text is important to allow an applicant the opportunity to show where staff may have misinterpreted the information in the application prior to a funding eligibility determination by the Commission.
10. New section 6010 is added to fully explain the conditions related to early funding per Water Code section 79755 (c). Previous draft regulation text did not explain how the Commission would implement Water Code section 79755(c). The conditions stated in section 6010(b) meet both the statutory conditions of section 79755 as well as policy decisions determined by the Commission to be in the best interest of the Program. Requirements deleted from this section are now contained in section 6003, with the exception of the peer review process, which has already been explained above.
11. New section 6011 text is added to replace the previous section titled "Commission Initial Funding Decision Process" to fully explain how the Commission will make a conditional eligibility determination on projects. This process is an extension of the previous sections on technical review and scoring and describes how the Commission moves from scores to a conditional eligibility determination.
- a. New section 6011 (a) is added to describe staff transmittal of technical review and component scoring information to the Commission.
 - b. New section 6011(b) is added to describe how the Commission considers the component scores for water system improvement, implementation risk, and resiliency and non-monetized benefit. In each of these cases, there are additional considerations by the Commission.
 - i. New section 6011(b)(1) is added to describe how the Commission considers information supplied by the applicant, state policies and the score supplied by staff for the water system improvement component. If the score supplied by staff is not consistent with the information the Commission reviews or the policies of the State, the Commission can modify the score according to limits described in a subsequent section.
 - ii. New section 6011(b)(2) is added to describe how the Commission considers the implementation risk score and associated staff comments. If the Commission determines the staff assessment of implementation risk is not consistent with the score, the Commission can modify the score according to limits described in a subsequent section.
 - iii. New section 6011(b)(3) is added to describe how the Commission considers the resiliency and non-monetized scores and staff comments. If the

Commission determines the comments are not consistent with the score, the Commission can modify the score according to limits described in a subsequent section.

- iv. New section 6011(b)(4) describes specific limits to the point adjustments the Commission may make. Any adjustments must be made by majority vote.
 - c. Renumbered 6011(c) contains the determinations the Commission will make per statutory requirements. This section was originally contained in the section titled "Commission Initial Funding Process". Once the Commission has the technical review information and has reviewed component scoring the Commission has the information needed to make the listed determinations.
 - d. New section 6011(d) is added to describe how the staff places projects into ranks based on Commission adjusted component scores and the resulting expected return on public investment score.
 - e. New section 6011(e) is added to describe the rules and procedures Staff will use in assigning suggested maximum conditional eligibility amounts to projects within specific ranks. The rules and procedures provide clarity and transparency in the process.
 - f. New section 6011(f) is added so that staff identify which projects within the ranks where suggested maximum conditional eligibility amounts are assigned also are specifically requested allowable early funding to complete environmental documentation and permits per Water Code section 79755(c) for Commission consideration.
 - g. New section 6011(g) is added to describe how the Commission reviews the staff suggested maximum conditional eligibility amounts and considers how public funds are being leveraged per Water Code section 79707; the ability of the collective suite of projects to advance the long term objectives of restoring the ecological health and improving water management for beneficial uses of the Delta; and implementation of the current California Water Action Plan in either accepting or adjusting staff suggested amounts. For projects that have requested early funding as noted by staff, the Commission needs to review the applicant supplied information describing their need for early funding and decide if early funding will be allowed. Staff would then assign early funding per Section 6010.
12. New section 6012 is added to explain agency findings required by Water Code section 79755(a)(3). This section explains how CDFW and the State Water Board will evaluate the project for the purpose of making findings that the project is consistent with the requirements of Chapter 8 of Proposition 1. CDFW and the State Water Board will base their findings on the ecosystem and water quality public benefits, the requirements of Water Code section 79753, and each agency's assessment of the relative environmental value because those components best inform whether those specific project benefits meet the stated requirements.
13. In section 6013, text is modified to be consistent with previous sections of the regulations.
- a. New section 6013(b) was added to give applicants who did not receive a maximum conditional eligibility amount information about their standing in the process and the opportunity to make an informed decision about whether to continue work to meet the requirements of Chapter 8.
 - b. Section 6013(e) was modified to add the option to provide early funding for Environmental Documentation consistent with Water Code 79755(c) and policy direction from the Commission.
 - i. New section 6013(e)(1) requires applicants to make a specific request for this funding so staff and the Commission will know if early funding is needed.
 - ii. Section 6013(e)(4) was modified to reduce the maximum program funding available for this purpose from 10 percent to 5 percent. This modification reduces the amount of program funding available to projects that are not

guaranteed to be completed and is consistent with Commission policy direction.

- c. Section 6013(f) was modified to provide clarity regarding the Funding Agreement process.
 - i. New section 6013(f)(2) was added to clarify that the requirements of this section have a deadline of January 1, 2022.
 - ii. Section 6013(f)(3) was modified to be consistent with other sections of this regulation. New text was added to clarify how applicants must provide information on changes to public benefits that occur after the Commission's maximum conditional eligibility determination and how that information will be evaluated by staff.
14. Previous section 6004 was deleted because the text, as modified, is now included in section 6004 with updates for 2030 and 2070 conditions as noted above.
15. Previous sections 6005 and 6006 were deleted because the text, as modified, is now included in new renumbered section 6007.
16. Renumbered section 6014 (previously section 6007) is modified to move text referring to contents of the application into the appropriate previous section of the regulations, section 6003. Additional changes referring to the statutory authority instead of the regulations and replacement of agency names with acronyms and terms used throughout the regulations were also made.
17. New section 6015 text regarding how the Commission treats confidential information is relocated from section 6001 in the January 2016 version to this section of the revised regulations to better focus the preceding text on the described process.
18. In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are non-substantive.

Additional Documents (Including Incorporated Documents) Added to the Record

In the interest of completeness, staff has also added to the rulemaking record and invites comments on the following documents incorporated by reference into the regulations:

Water Storage Investment Program Technical Reference Document, August 2016

Staff report supporting the incorporated Water Storage Investment Program Technical Reference Document, September 2, 2016

Physical and Economic Benefits Summary Tables, August 2016

Ecosystem Priorities Application Worksheets, August 2016

Water Quality Priorities Application Tables, August 2016

These documents are available for inspection at the California Water Commission office at 901 P Street, Sacramento, CA or by downloading the documents from the California Water Commission website at <https://cwc.ca.gov/Pages/QuantificationRulemaking.aspx>

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to:

Joe Yun

California Water Commission

P.O. Box 924836

Sacramento, CA 94236

(916) 651-0156

Joseph.Yun@water.ca.gov

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to:

Elizabeth Perkins
California Water Commission
P.O. Box 924836
Sacramento, CA 94236
(916) 651-7501
Elizabeth.Perkins.water.ca.gov

Please note that public comments on the changes to the proposed regulations should be directed to the address below.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than 5:00 pm on the due date to the following:

Postal mail:
California Water Commission
P.O. Box 924836
Sacramento, CA 94236

Electronic submittal:
Joe Yun
WSIPcomments@cwcc.ca.gov

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Commission, comments must be directed to the Commission in one of the two forms described above and received by the Commission by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Commission.

If you need this document in an alternate format or another language, please contact the Commission's Office Technician at (916) 651-7501 no later than five (5) business days from the release date of this notice.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame al Técnico de la Oficina de la Comisión al (916) 651-7501 no más de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso

CALIFORNIA WATER COMMISSION



Rachel Ballanti
Acting Executive Officer

Date: